IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 69 OF 2007

E D C LIMITED THROUGH GENERAL MANAGER ... Appellant

Versus

UNION OF INDIA THROUGH DEPUTY COMMISSIONER CUSTOMS AND CENTRAL EXCISE AND ANR., ... Respondents

Mr. Mahesh Sonak, Advocate for the Appellant.

Mr. Joseph Vaz, Central Government Standing Counsel for the Respondent No.1.

Coram:- N. A. BRITTO, J.

Date:- 7th December, 2007

ORAL ORDER

Heard Mr. M. S. Sonak, learned Counsel on behalf of the Appellant/Defendant No.2 in Civil Suit No.9 of 2007.

The defendant no.1 has chosen to remain absent yesterday and today.

It appears that the Department of Customs and Central Excise has to recover a sum of Rs.15,62,020/- from defendant no.1. Defendant No.1 had plots No.254 and 255 situated at Kundaim Industrial Estate mortgaged to defendant no.2 for a loan of Rs.35,00,000/- and odd. Defendant No.2 had attached the said plots under Section 29 of the State Financial Corporation Act, 1951 and it is the contention of defendant no.2 that in due course of time defendant no.2 was entitled to sell the said plots with a view to recover the amount due to defendant no.2 towards the loan advanced by them to defendant no.1. The contention which was raised before the learned trial Court and accepted by the learned trial Court was that the

Department of Customs and Central Excise had a lien and first charge over the goods attached vide panchanama dated 10-3-2003.

Learned Counsel on behalf of defendant no.2 has stated that the said goods seized by the plaintiff i.e. the Department of Customs and Central Excise were kept separately and they would be entitled to take them and deal with them in accordance with law.

It was the further contention of the Department of Customs and Central Excise that the Central Government through the said Department of Customs and Central Excise would also have precedence over the dues which defendant no.2 would fetch after selling the said two plots mortgaged to them.

On behalf of defendant no.2 reliance was placed on Sicom Ltd. v. Union of India and others(2006(6) Bom.C.R. 159) and Syndicate Bank and another v. The Official Liquidator and others(1999(2) Bom.C.R.618). In this case, this Court relying upon the decision of the Apex Court reported in AIR 1967 SC 1831 has held that the State does not have priority for its dues over secured creditors and its priority is qua non secured creditors only. Defendant No.2 having taken action in terms of Section 29 of the said Act was certainly entitled to sell the said two plots mortgaged to them towards the recovery of its dues towards the loan advanced by defendant no.2 to defendant no.1 and in such a situation, in my view, the Department of Customs and Central Excise would certainly have no case to obtain a relief of temporary injunction against defendant no.2. In fact, learned Counsel on behalf of defendant no.2 submits that no relief in the plaint was sought against defendant no.2 at all.

In view of the above, the appeal is bound to succeed and the impugned Order dated 30-6-2007 is hereby set aside. Defendant No.2 would be entitled to deal with the said two plots including factory

premises, plant and machinery in accordance with the provisions of the said Act.

Appeal allowed on the above terms.

N. A. BRITTO, J.

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